

## **ARTICLE 26. Percent for Art Bylaw with Proposed Changes (Public Art Commission)**

A. To see if the Town will amend the Town of Amherst General By-Laws by adding the following new by-law:

### **~~ONE~~ PERCENT FOR ART BYLAW**

#### **Section 1 -- Purpose**

This Bylaw authorizes the allocation of ~~one-one half~~ percent (0.5%) of the capital costs of any eligible town construction, renovation or capital improvement project for the creation and maintenance of public art in the Town of Amherst. Such projects must be budgeted at a minimum of \$100,000 to qualify. The purpose of this bylaw is to direct the integration of artwork into public spaces and public works projects in the Town of Amherst through a well-administered and appropriately funded public art program.

The program will (a) promote the enjoyment of the arts by the residents of and visitors to Amherst by increasing the quantity and quality of both visual and performing arts available in public buildings, facilities and spaces; (b) improve and expand the value and use of public buildings and facilities through the placement in such buildings and facilities of distinguished works and creations of artistic endeavor; (c) create a funding program which will ensure that arts are acquired, created, developed, maintained and otherwise made available for the enjoyment of Amherst's residents and visitors.

#### **Section 2 -- Definitions**

For the purposes of this bylaw the following words and descriptions shall have the following meanings:

a. "Construction project or projects" means any capital project paid for in full or in part by the Town through its own eligible funds ~~or with eligible funds appropriated to it by other governmental units,~~ to construct or remodel any building, decorative or commemorative structure, park, parking facility or any portion thereof within the corporate limits of the Town and with respect to the construction of which bidding is required under State law.

b. "Eligible funds" means a source of funding for construction projects funded by the Town's General Fund from which arts are not excluded as an appropriate purpose for expenditure.

c. "Public Art Fund" means the fund set aside by this Bylaw in the Town treasury for the purpose of allocating moneys for the development and creation of art in and upon public space in the Town.

d. "Public art project or projects" means art to be funded from the Public Art Fund. Such projects may be an integral part of a building, attached to a building, placed within or outside of a building, or within a public space, ~~or in the case of performing arts performed in a public building or space.~~ Such art may include but shall not be limited to paintings, sculpture, engravings, carvings, frescoes, stained glass, mobiles, murals, collages, mosaics, bas-reliefs, tapestries, photographs, drawings, ~~drama, instrumental or vocal music, dance,~~ and landscape items, including the artistic placement of natural

materials or manmade fountains or objects or other functional art objects.

e. "Public place or space" shall mean publicly accessible landscapes, structures and infrastructure. Public places include, but are not limited to, public parks, plazas, streets, libraries, bridges, stairways, buildings and waterworks.

f. "Capital improvement" means a tangible asset or project as outlined below:

- New public buildings, or additions to existing buildings, including land acquisition costs and equipment needed to furnish the new building or addition for the first time;
- Major alterations, renovations, or improvements to existing buildings or facilities that extend the useful life of the existing buildings by ten years;
- Land acquisition and/or improvement, unrelated to a public building, but necessary for conservation or park and recreation purposes;
- ~~New construction or major improvements to Town's physical infrastructure, including streets, sidewalks, storm water drains, the water distribution system, and the sanitary sewer system. Infrastructure improvements must extend the useful life of the infrastructure by at least ten years to be appropriately classified as a capital improvement.~~

### Section 3 -- Funding

All authorizations for municipal construction or capital improvement projects budgeted in excess of \$100,000 shall include and set aside in a designated Public Art Fund an amount equal to ~~one one half~~ percent (0.5%) of the total eligible, estimated costs of such projects, as determined by the Town Manager or his or her designee, for public art. Copies of these estimated costs shall be delivered to the Amherst Public Art Commission as soon as possible during the planning stages of the project. The estimates shall include all construction costs, architectural and engineering fees and sitework expenses.

Funds appropriated may be used for design services of artists, for the selection, acquisition, purchase, commissioning, installation, examination and/or display of original artworks, for the maintenance of artworks, for educating the public about the artwork, and administrative costs to manage the program.

Excluded from this source of funding are the following: Decorative or functional elements which are designed by the building architect as opposed to an artist commissioned for this purpose; landscape architecture except where designed by the artist as an integral part of the work of art by the artist; directional elements such as supergraphics, signage, or color coding, except where they are parts of the original work of art by the artist.

Any moneys appropriated to the Public Art Fund for a particular municipal project which have not been spent within three years of such appropriation, or, upon special approval by the Select Board, within five years, shall be then become available for the purposes of the general public art needs of the Town, as recommended by the Amherst Public Art Commission. However, if such funds are derived from a Note or Bond authorized by the Select Board or from other special purpose or dedicated funds, they shall revert to the funds from which they derive at the expiration of the three- or five-year period,



whichever applies.

#### Section 4 -- Public Art Ownership and Liability

Ownership of artwork selected in accordance with this bylaw shall transfer to the Town of Amherst upon final installation in the public domain. In accepting ownership of public art, the Town also accepts responsibility for its maintenance, insurance, and for upholding contractual agreements made between the artist and the Town. Copyright privileges in accordance with the U.S. Copyright Act shall remain with the artist, with reproduction rights allowed the Town for appropriate promotional and educational purposes.

The artist in charge of the public art project shall provide and maintain insurance coverage for the duration of the creation, fabrication and installation of the artwork. Upon completion and installation at the prescribed site, the finished artwork shall be insured by the Town of Amherst until such time as it is deaccessioned from the public art inventory. Any decision concerning deaccessioning shall be made by the Town Manager in consultation with the Public Art Commission.

During the artwork and site selection process, due consideration shall be given to maintenance requirements including structural and surface soundness, inherent resistance to theft, vandalism and weathering, as well as the cost and amount of ongoing maintenance and/or repair anticipated. The artist shall be responsible for providing any and all requested information regarding maintenance requirements that are unique to the particular public art project. Ten percent of the total cost of approved projects shall be set aside in a maintenance account within the Public Art Fund for ongoing maintenance and conserving of additions to the public art inventory.

#### Section 5 -- Responsibilities

##### I. Amherst Public Art Commission

The public art program shall be administered by the Amherst Public Art Commission (APAC), under the supervision of the Town Manager or his or her designee, with the assistance of a qualified arts jury that the APAC shall appoint as needed and appropriate. Administering the public art program shall include the following responsibilities:

- a. Meeting with relevant Town departments, nonprofit organizations, neighborhood organizations and interested Amherst citizens and artists as appropriate in relation to developing recommendations for public art plans for the Town; holding public hearings as needed to determine public art needs and placement; developing recommendations for prioritizing the creation and placement of works of art in public buildings and public spaces within Amherst; developing guidelines for the selection of artists and projects for the Town; developing programs to exhibit temporary art, ~~both visual and performing~~, in existing public spaces.
- b. Soliciting proposals for reviewing and selecting public art projects, following consultation with such of the parties referred to in (a) above, with the assistance of a qualified arts jury and input from those who will be working at the project site when completed, as appropriate.
- c. Developing recommendations for the geographic location of such works of art, and

the location within individual sites and buildings where such works shall be placed or created, subject to the approval of the Town Manager.

d. Establishing budgets, subject to Town Manager approval, for all commissioned projects, including budgets for materials, fees, operating and maintenance expenses, and other reasonably contemplated items of expense in the acquisition, development, creation, implementation and, where applicable, ongoing maintenance of such projects.

e. Overseeing, with the appropriate Town department(s), the art installation and coordination of the artist with the project team.

f. Approving dispersal of funds to the artist(s) at appropriate stages of the art project development.

g. Making recommendations to the Town Manager for procedures to be followed by other departments for the maintenance and preservation of such works of art.

## II. Town of Amherst

Town staff shall provide administrative and technical support through various departments, including but not limited to finance, treasurer/collector, accounting, public works, and planning; AND

**B.** To see if the Town will vote to authorize the Select Board to request a Special Act of the Legislature authorizing the Town of Amherst, notwithstanding any general or special law to the contrary, to establish a Public Art Fund as defined in the ~~One~~ Percent for Art Bylaw, and further to establish One Half Percent (0.5) for Art as an expense eligible for borrowing.